

THIRTY-SIXTH ORDINARY SESSION

In re CONNOLLY-BATTISTI (No. 2)

Judgment No. 274

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the United Nations Food and Agriculture Organization (FAO) drawn up by Mrs. Norah Connolly-Battisti on 4 June 1975, the FAO's reply of 8 August 1975, the complainant's rejoinder of 28 September 1975 and the FAO's surrejoinder of 4 December 1975;

Considering Article II, paragraph 5, of the Statute of the Tribunal, Article VIII of the FAO Staff Regulations, FAO Staff Rules 303.011, 303.021 and 303.022, FAO Manual provisions 330.141, 330.151, 330.152, 330.211, 330.212, 330.321, 330.323, 330.324 and 330.325 and the Statutes of the FAO Staff Organization;

Having examined the documents in the dossier, the oral proceedings suggested by the complainant not being deemed necessary by the Tribunal;

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

A. The complainant joined the service of the FAO on 30 August 1954 and is employed on a permanent appointment as a research assistant at grade G.6 in the Statistics Division. In her complaint she gives 4 March 1975 as the date of the decision she impugns. In fact on that date the Director-General took two distinct decisions with regard to the complainant, and it appears from the dossier that she is impugning both of those decisions. The facts relevant to each of the two decisions are given below in paragraphs B and C and paragraphs D and E respectively.

B. On 2 February 1973 the Director-General sent a memorandum to the complainant, who was a member of the Staff Council at the time, stating that he intended to impose on her a disciplinary measure in the form of a written censure and that if she did not alter her behaviour he would take more drastic measures, not excluding dismissal. The reason given by the Director-General to justify the disciplinary action was that she had caused several untoward incidents: she had, for example, insulted the Chairman of the Election and Referendum Committee in a public place by alleging that he lacked integrity and that the Committee's decisions were his own and were designed to comply with the Administration's wishes. Furthermore, she was one of the signatories of an open letter to the FAO staff which levelled serious charges mainly at the Chairman of the Staff Council, Mr. Zenny, and the Chairman of the Election and Referendum Committee, Mr. Tedesco, and alleged that the staff union elections had been sabotaged.

C. On 8 February 1973 the complainant answered the Director-General's memorandum. She maintained that it was improper to impose disciplinary measures on her for having expressed opinions as an elected staff representative. On 19 February 1973 the Director-General addressed a memorandum to the complainant confirming the written censure. By memorandum of 28 February 1973 she appealed to the Director-General against that decision. On 15 March 1973 the Director-General again upheld the disciplinary measure and stated that it had been taken because of her defamatory attacks on the honour and integrity of other staff members. On 30 March 1973 she appealed to the FAO Appeals Committee. The Committee met on 29 January 1975 and took the view that the complainant's behaviour could not be condoned; it was nevertheless of the opinion that the disciplinary measure of written censure was based on incidents not related to each other and should therefore be replaced by some lesser form of admonishment. By letter of 4 March 1975 the Director-General informed the complainant that he accepted the Committee's recommendation and was replacing the written censure with a written reprimand, which was not a disciplinary measure. The complainant is impugning that decision.

D. On 15 June 1973, during a meeting of a committee of the FAO Council the complainant went up to the podium while the Chairman was summing up and handed a note to the Deputy Director-General, who was seated next to the Chairman. The Deputy Director-General told her to withdraw, but she insisted and caused a disturbance for which the Chairman had to apologise to the meeting. The Director-General took the view that the complainant's conduct constituted an interference with the proceedings of the FAO Council and a breach of the rules of discipline to which staff members were subject during such proceedings. On 22 June 1973 he accordingly addressed her a written reprimand and warned her that if she committed further misconduct more drastic measures might be taken

against her, not excluding dismissal.

E. On 5 July 1973 the complainant appealed to the Director-General and asked him to remove the written reprimand from her file. On 25 July 1973 the Director-General told her that he was confirming the reprimand. On 7 August 1973 she appealed to the Appeals Committee, which met on 29 January 1975 and held that her behaviour had been incorrect and that the written reprimand had been justified. The Committee recommended the Director-General to dismiss the appeal. By letter of 4 March 1975 the Director-General informed the complainant that he endorsed the Committee's recommendation. That decision, too, is impugned.

F. Believing that in all the circumstances described above she acted in her capacity as a staff union representative, the complainant asks the Tribunal to order the Director-General to withdraw the threat of more drastic measures, not excluding dismissal, contained in his memorandum of 2 February 1973; to withdraw the written reprimand and the further threat of dismissal contained in his letter of 22 June 1973; and to withdraw the written reprimand contained in his letter of 4 March 1975. She asks the Tribunal to order the FAO to remove all the letters and memoranda mentioned above from her personal file. Finally, she puts several questions on which she wishes to have the Tribunal's opinion.

G. The Organization contends that in the circumstances set out in paragraphs B to E above the complainant's behaviour was not in keeping with the attitude expected of an international official and that the written reprimands, which it falls within the Director-General's discretionary authority to impose, were warranted. It therefore considers that there are no grounds for withdrawing them nor for removing the relevant correspondence from her personal dossier. It asks the Tribunal to dismiss the complaint in its entirety.

CONSIDERATIONS:

1. The complainant challenges the validity of two written reprimands for misconduct administered to her by the Director-General. The main ground of the challenge is that the reprimands related to her activities as a member of the Staff Council and not to her staff duties. The first of them had originally taken the form of a written censure, but on the recommendation of the Appeals Committee the Director-General reduced it to a reprimand. Staff Rule 303.01 empowers the Director-General to impose disciplinary measures upon staff members whose conduct is unsatisfactory, the mildest of them being a written censure. Staff Rule 303.02 says that "a written censure shall be distinct from a written or oral reprimand of a staff member by a supervisory official". Manual Section 330.212 says that a written reprimand, while not a disciplinary measure, is to be made a matter of record: "it functions as a formal warning to the staff member involved". The complainant submits that under Staff Rule 303.02 a reprimand can be administered only by a supervisory official. The Director-General has however under the General Rules of the Organization disciplinary control over all staff members and he must therefore have inherent power to warn as an alternative to a disciplinary measure and to have the warning put on record; whether or not that is called a reprimand does not matter.

2. A warning or reprimand must be based on unsatisfactory conduct since what it is saying in effect is that if the conduct is repeated a disciplinary measure may be taken. But whereas in the case of censure which is of a disciplinary nature the Tribunal exercises full power of review as to the facts and the law because of the protection which staff members of the organization should enjoy, when the measure takes the form of a reprimand which is not of a disciplinary nature the Tribunal will exercise a limited power of review. That is to say, the Tribunal will not interfere unless the measure was taken without authority, or 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.

3. The complainant was a member of the Staff Council and the first reprimand was occasioned by her activities in relation to an election for the Council due to be held on 30 January 1973. It is necessary to an understanding of her position to give some description of the Staff Council itself and of the part that the complainant played in it in 1972.

The Staff Council is a body recognised and regulated by Article VIII of the Staff Regulations. Regulation 301.081 provides that it shall be elected by the staff and responsible to the staff. Regulation 301.0011 says that it shall be composed in such a way as to afford equitable representation to all levels of the staff. Regulation 301.0812 prescribes that the election of the Staff Council shall take place annually under regulations drawn up by the Staff Council and agreed to by the Director-General.

4. Article VIII was enacted in 1952. Whether any regulations were ever drawn up by the Staff Council as prescribed by 301.0812, does not appear from the dossier. If they were, they appear to have been subsumed in the Statutes of the FAO Staff Organisation (hereinafter referred to as the Statutes) adopted in 1965. A new set of Statutes was promulgated in 1970, but there is disagreement whether all the alterations made were properly approved. Nothing much hinges on the changes and so it is convenient to refer to the 1965 Statutes. The main features relating to elections and referenda are set out in the following paragraphs:

(1) Composition of the Staff Council. Article 4 provides that the Council is to have twenty-one seats and that for the purposes of election the staff is divided into three constituencies, namely, General Service non-Local, General Service Local, and Professional. This division had been in effect since 1952 and was presumably intended to satisfy the requirement of "equitable representation to all levels".

(2) January elections. Article 9(a) provides that the annual election is to be held in January and is to be for half the seats only, each seat to be filled for two years.

(3) Referenda. The Council is the chief executive organ of the staff but is bound by the decisions of the whole staff given on a referendum. A referendum must be held at the demand of the Council itself or upon a demand signed by at least 200 members. Amendments to the Statutes must be by referendum.

(4) Election and Referendum Committee. Articles 9(h) and 10 provide for an Election and Referendum Committee of six staff members to be appointed by the Staff Council but to be independent of it. This Committee is responsible for establishing procedures, after agreement with the Staff Council and the Director-General and subject to the Statutes, for the carrying out of elections and referenda. The Chairman of the Committee at all material times was Mr. Tedesco.

5. The Election and Referendum Committee had since 1965 taken upon itself without objection three tasks. First, it fixed the date in January of the annual election. Secondly, it apportioned the twenty-one seats between the three constituencies on the basis of their numerical strength. At the relevant time this resulted in five seats for the General Service non-Local, nine for the General Service Local and seven for the Professional. Thirdly, the Committee enforced a practice of more doubtful validity but one which had obtained from the beginning in 1952. The staff of FAO is composed of those working at headquarters and those working at regional offices. (This division has nothing to do with the division of the General Service into Local and non-Local, which refers to the place of recruitment). The practice, which is not mentioned in the Statutes but was laid down in a pre-1965 set of rules, was that while all staff members who were sufficiently qualified by length of service could vote, only members of the headquarters staff could be candidates. This is presumably because of the difficulties that might be encountered by regional staff in attending meetings of the Council.

6. The complainant, who had served for 15 years on the Staff Council, was in 1972 the Chairman of the General Service non-Local constituency. She appears to have been the leader of a group, composed of persons from both the General Service constituencies, who on a number of issues were in the minority. She herself regarded the Chairman of the Staff Council, Mr. Zenny, a Professional, as what she terms "management-oriented". The first reprimand was incurred as the result of two utterances in which she developed this theme beyond, it is alleged, the point of permissible criticism, with reference in general to those members of the Council with whom she disagreed and in particular to Mr. Zenny and Mr. Tedesco. She has exhibited a number of documents which, she claims, show her criticisms to have been justified. Unfortunately, the documents as well as the justification have in the Organization's reply been ignored as immaterial. The Organization's case is simply that to cast doubt upon the integrity of another staff member is misconduct.

7. In the opinion of the Tribunal this is too broad a proposition. Certainly nothing in the paragraphs that follow is to be read as a definitive account of the disputes between the complainant and other members of the Council or as any reflection in particular on Mr. Zenny and Mr. Tedesco. Nevertheless, on a charge of misconduct motive and intent are relevant and for this it is important to ascertain the claimant's version of events as part of what she has to say for herself. Was the criticism made under a sense of duty or merely as gossip? Was there an honest belief in it or was it simply malicious? Was the occasion on which it was made one on which a Council member ought to have kept silent or one on which she might be expected to speak out? These are all material considerations.

8. The Election and Referendum Committee began making preparations for the election in November 1972 or thereabouts and in accordance with what appears to be customary made rules governing electioneering and

providing for "campaign literature". In November the complainant and seven other supporters issued, presumably as campaign literature, an "open letter to the staff" in which they urged the election of candidates who would be loyal to the staff. They gave their version of disputes that had occurred between the two sides of the Council during 1972. They referred to the failure of the Chairmen, both of the Staff Council and of the Election and Referendum Committee, to give effect to a request for a referendum, first made in December 1971, on the question whether each constituency of the staff should have its own semi-autonomous association. The documents exhibited in the dossier show that Mr. Zenny submitted the question to Mr. Tedesco on 27 March 1972 and that he replied that the referendum would take place on 31 May. It was not held at any time in 1972 and the open letter said that it was "sabotaged". On the other hand, so the complainant contends, a referendum which the Chairman wanted so as to overthrow a decision of the Staff Council which he disliked was hurried through in August when many of the staff were on leave. She complained at the time of an arbitrary decision of the Election and Referendum Committee that the maximum vote required for the validity of a referendum was 250 and also that the time limits required by the Statutes had been ignored: the open letter refers to this referendum as "being of doubtful legality".

9. There were in 1972 two resignations by General Service non-Local members. One was on 23 July 1972 from the Executive Committee of the Staff Council on the ground that it was being by-passed; the other was from the Council itself on the ground that Mr. Zenny had permitted the Statutes to be broken on many occasions. The open letter refers to this sort of incident in general terms, saying that documents which should have been sent to the Staff Council for consultation and review were not being sent. The open letter says also that complaints about illegalities in conducting Staff Council and Election and Referendum Committee matters were defended by the Legal Counsel's office; this, it said, was a part of the office of the Director-General and the Chairmen of both the Council and the Committee worked in it. This was true as to the former but not as to the latter, which the complainant later said was a mistake made in good faith. The letter concluded:

"The Staff Council is in a precarious position. Where are we going in this situation? We must ask ourselves, can the Staff Council be cleared up and regain the confidence of the staff or must we find other means of co-operation in consultation on a more equitable and honourable basis?"

To begin with, we must find CANDIDATES for the 1973/74 Staff Council (who, when elected, will be loyal to the staff) which must introduce the necessary reforms."

10. On 29 January 1973, the day before the election was due to be held, the Director-General intervened to postpone it. His intervention arose out of a situation which had for some time been giving him concern, namely the fact that regional staff could not be candidates for a seat on the Council. Since this had been settled, the numbers of regional staff had greatly increased, so that by 1972 they amounted to about 41 per cent of the whole, the great majority of them in the Professional constituency. A working group was set up in 1971 which drew up new Statutes providing "inter alia" for candidates from the regional staff. The draft Statutes were presented to the Staff Council on 8 July 1972 for consideration and submission to a referendum. On 4 October the Director-General asked the Staff Council for its reaction, saying that he considered it vitally important that regional staff should be adequately represented. The Council replied that the report of the working group "should be shelved for the present and that the problem should be studied anew during the next two years".

11. The Election and Referendum Committee prepared for the election therefore according to the existing practice. In accordance with Article 10 of the Statutes they consulted the Staff Council and the Director-General about the arrangements which they had made. Mr. Tedesco did this on 8 December 1972 and received no comment in reply. On 17 January 1973 the Committee rejected a nomination as a candidate of a regional member of the staff. On 23 January 1973 the Professional members of the Staff Council wrote to the Director-General about the position of regional staff and asked him to do what was necessary to remedy the situation. On 29 January the Director-General wrote to Mr. Tedesco as Chairman of the Election and Referendum Committee. He said that Regulation 301.0811 provided that the Staff Council should be composed in such a way as to afford equitable representation to all levels of the staff and that he as Director-General was constitutionally required to ensure compliance with the Regulations. Therefore in accordance with the authority vested in him he requested an assurance from the Committee, to be given before the close of working hours on that same day, that all staff members, regardless of their duty stations, should have the opportunity of participating in the next day's elections, participation to include the nomination of candidates. He further requested that, if because of shortage of time this assurance could not be given, the elections should be postponed until such time as satisfactory arrangements could be made.

12. It is easy to understand the Director-General's impatience at the lack of progress in a matter which he

considered to be urgent. But it is easy also to understand the alarm which his intervention occasioned. Since he cannot have thought it possible for the Election and Referendum Committee to provide the assurance requested, the intervention was in the form of an ultimatum given in a sensitive area. Any intervention by an employer with the processes by which his employees elect the representatives who will have to negotiate with him is a delicate matter even when he has a clear "locus standi". The Director-General's "locus standi" was doubtful. Where the regulations are silent about how they are to be applied and enforced, it may well be that the Director-General has a duty to act. But Article VIII seems to leave the details of the electoral process, as might be expected, to the Staff Council, limiting the power of the Director-General to that of disapproval. It might well be contended also that neither the Director-General nor the Staff Council could enforce Regulation 301.081 in a manner which, by postponing an election, would entail a breach of 301.8012.

13. The Election and Referendum Committee met immediately on receipt of the Director-General's memorandum and appeared to have had no difficulty in agreeing to his demand. Mr. Tedesco wrote to the Director-General on the same day, 29 January, saying that the Committee "had no alternative but to defer the elections until such time as satisfactory arrangements can be made". Whatever may be the power under the Staff Regulations, the Statutes, which are the Election and Referendum Committee's only source of authority, required quite clearly that the election should be held in January. The Committee may have believed that the Director-General's prerogative enabled him to dispense them from observance of the Statutes, but they cannot sensibly have supposed that their action would not meet with criticism and even indignation.

14. It is not clear when the Director-General first saw the open letter which was now some two months old. But it was on 29 January that he caused an inquiry to be sent out to all the signatories to ask whether they admitted their signatures.

15. Elections to a Committee, scheduled to take place at the same time as the Council election, were not postponed. On 30 January while Mr. Tedesco was present at the balloting in the main hall, the complainant spoke to him and to another member of the Election and Referendum Committee on the subject of the postponement of the Council elections. By a memorandum written on the next day to the acting Chairman of the Staff Council complaining of the complainant's behaviour as a member of the Council, Mr. Tedesco said that she had insulted him, saying that he lacked integrity and that the decisions of the Committee were his own decisions which had been made to comply with the wishes of the FAO Administration. He referred to the incident as being in public but there is no evidence that the conversation was overheard.

16. On 31 January also, i.e. the same day as Mr. Tedesco's memorandum, there was an extraordinary meeting of the Staff Council at which a motion proposed by the complainant and deploring the intervention of the Director-General was carried.

17. On 1 February the acting Chairman of the Council wrote to the complainant about Mr. Tedesco's complaint. He referred to libellous allegations constituting malicious representation, slander and calumny and requested the complainant to make a public and unqualified apology within two days. The complainant did not do so. One of the rules of the Staff Council empowers the Chairman to act on a motion of censure against any member of the Council if that member's statements are injurious to the deliberations and interests of the Council or render another member "liable to be placed in jeopardy or dishonour". No further action was taken in the Council against the complainant under this rule or otherwise.

18. On 2 February the Director-General sent to the complainant a memorandum in which he referred to Mr. Tedesco's memorandum to the acting Chairman (which had evidently reached him in some way which does not appear from the dossier) and also to the open letter. He referred to the "serious allegations" made against the Chairmen of the Council and Election and Referendum Committee and in particular to the innuendo that they had been disloyal to the staff. He continued: "On these occasions you have used language, both orally and in writing, designed to distort the truth and impugn the motives of your colleagues, even attempting to intimidate them in the exercise of their functions". He stated that he intended to impose a written censure, and that he gave formal warning that he would take more drastic measures, not excluding dismissal, "in the event of further similar instances of misconduct on your part".

19. The position of a staff representative is not an easy one. There may be times when there is a conflict of interest between loyalty to the staff and loyalty to the Administration. Each representative must resolve the conflict in his or her own way and not all will see it alike. The Tribunal could not find evidence, even if it were its duty to assess

it, which could convince it that Mr. Zenny and Mr. Tedesco were lacking in integrity or loyalty to the staff. But equally it cannot find in the dossier any evidence from which it could be inferred that the complainant and her fellow signatories used language designed to distort the truth or to intimidate their colleagues. The Director-General's memorandum produces no evidence of deliberate distortion or of intimidation. What it says in the earlier part consists only of assertions that the facts were contrary to what was stated in the open letter (e.g. that the allegation of sabotage was "entirely unfounded") or of complaints that the open letter did not put both sides of the case.

20. The complainant submits that the Director-General, anticipating opposition from the complainant to his plans for reorganising the Staff Council, wrote the memorandum of 2 February to intimidate her by the threat of dismissal. She asks why after so long an interval he decided to act on the open letter about which apparently no complaint had been made to him, why he selected her alone out of the eight signatories and why he took up a complaint from Mr. Tedesco that was addressed not to him but to the Chairman of the Staff Council.

As to the second of these, the Organization replies that the complainant was selected because she was the only person involved in the two incidents and because, as is mentioned in the memorandum of 2 February, she had four years before been rebuked by an Assistant Director-General for rude and unruly behaviour at hearings of the Appeals Committee. The Tribunal does not consider that the facts warrant the inference that the Director-General was activated by improper motives.

21. The memorandum of 2 February in which the views of the complainant and the other signatories of the open letter were condemned as false was, however, written before any invitation had been given to any of them to submit their side of the case. The complainant had not even been asked (though this turned out to be immaterial) whether she admitted any conversation with Mr. Tedesco. The Organization contends that the memorandum was only "the initiation of disciplinary procedure" and that it did specifically and in accordance with Manual Section 330.325 give the complainant five days in which to reply. Thereafter, it is contended, the facts were "thoroughly investigated by senior officers in the Director-General's office" and that the censure itself was not imposed until 19 February 1973. This does not appear to be the view of the Director-General himself who wrote on 19 February that he confirmed the imposition of a written censure and later on 22 June (see paragraph 25 below) referred to the censure as dated 2 February. The memorandum of 2 February is written in the language of conclusions and not of allegations; it is impossible to argue that the writer of a letter which says that if the misconduct is repeated the offender may be dismissed, retains an open mind about whether or not misconduct had occurred. Whatever investigation was thereafter made (there are no records of it in the dossier), the language of this memorandum disqualifies the Director-General from administering either a censure or a reprimand.

22. Apart from this difficulty, the Tribunal is not satisfied that the acts with which the complainant is charged amount to unsatisfactory conduct within the meaning of the Staff Regulations so as to authorise either a censure or a reprimand. Unsatisfactory conduct is said in Manual Section 330.151 to consist of "conduct which is incompatible with the staff member's undertaken or implied obligation to the Organization". The unsatisfactory performance of staff duties is clearly within this general definition. But when the offending conduct falls outside staff duties, each case must be examined carefully to see whether an obligation has been broken. As a general rule a staff member's conduct of her private life, for example, is not the concern of the Director-General, though there are exceptional cases as when, for example, misconduct brings the Organization into disrepute. Activities within the Staff Organization likewise constitute an area that is "prima facie" outside the Director-General's jurisdiction. Here again there may be exceptional cases. It is unnecessary for the Tribunal to decide what view it would take of malicious and indefensible slanders spread about other members of the staff in conversations, whether in the office or outside the office and whether connected or not with the affairs of the Staff Council. But as a general rule a staff member gives no undertaking, express or implied, about how she will conduct herself in the business of the Staff Council or its organs. It would be contrary to the principle of freedom of association that she should. Freedom of association means that there must be freedom of discussion and of debate, and this freedom when feelings run strong, as is illustrated indeed by the memorandum of 2 February, can spill over into extravagant and even regrettable language. The Staff Council has its own rules for dealing with misdemeanours of this sort. There could be no true freedom of association if the disapproval of the Director-General, whether justified or not, of what was said could lead to disciplinary measures.

23. The controversy over the reform of elections to the Staff Council continued and eventually led to the second reprimand administered to the complainant. On 8 February 1973 a proposal to amend Article 9(a) of the Statutes - the terms of the amendment are not in the dossier but the complainant says that they were in accordance with the

subsequent proposals of the Director-General - was heavily defeated on a referendum. On 21 May the Director-General called a meeting of staff representatives and told them that he intended to submit to the June session of the FAO Council for its endorsement a formula which he considered equitable and practicable. The formula was in two parts. First, out of the twenty-one seats on the Council three should be taken from the two General Service constituencies, the Professional being left as it was, and given to a new category or constituency of staff members serving at headquarters but who had spent at least three years in the regions. The second was that all staff could vote for candidates in all categories instead of only for candidates in the category to which the voter belonged. The complainant and her group replied on 25 May that neither the Director-General nor the FAO Council could interfere in the internal affairs of the Staff Organization; the only legal way to alter the Statutes was by a referendum. The Professional constituency informed the Director-General on 29 May that in the extraordinary situation they would accept the Director-General's role as enforcer of the Staff Regulations; they accepted also the main line of his proposals but they wanted ten seats. The Director-General prepared for the FAO Council a paper giving the history and background of the controversy to which he annexed the letters of 25 and 29 May. The Director-General did not specify to the FAO Council the machinery whereby he intended to effect the reform. He did not propose any amendment either to the Staff Regulations or to the Statutes; he told the FAO Council simply that he intended to carry through his solution but that he would like to have the endorsement of the FAO Council before he implemented it.

24. On 15 June 1973 the Committee of the Whole of the FAO Council discussed the Director-General's proposal. The complainant and some representatives of the staff were present but it was not in order for them to speak without permission. The Organization's Legal Counsel addressed the Committee but did not tell it what was in the complainant's view the correct legal position, namely, that the Director-General's proposal amounted to an amendment of the Statutes which could be effected only by a staff referendum. When the Chairman of the Committee began to sum up the complainant took to the podium a note for the Deputy Director-General who was sitting next to the Chairman, in which she asked that either the Legal Counsel should be recalled or that a staff representative should be allowed to explain. It is agreed that the incident caused a brief interruption of the Chairman's speech. The complainant claims that if the Deputy Director-General had taken the note quietly, she would have left the podium immediately, but instead he rejected it and ordered her off the podium; so she asked the Chairman's permission to give him the note. She relies also on the fact that the purpose of the intervention was justified, since she and other staff representatives wrote to the Chairman of the FAO Council about it and at the plenary session he asked the Legal Counsel to explain the position. The Organization's version, as contained in the written reprimand, is that the complainant went up to the podium without permission and handed a message to the Deputy Director-General. She was told by the Deputy Director-General that she had no business to be on the podium but she asked to be heard and engaged in explanations. The Deputy Director-General had to request her to leave the podium three times before she did so.

25. On 22 June the Director-General addressed a written reprimand to the complainant, based doubtless on the Deputy Director-General's version since he had not asked the complainant for hers. He said that he took a very serious view of the complainant's apparent disregard of the formal warning given her in the letter of 2 February 1975 in connection with another instance of misconduct on her part. However he made allowance for the state of excitement in which the complainant apparently was and so in spite of the gravity of the misconduct imposed a written reprimand rather than a disciplinary measure.

26. The Tribunal cannot accept the complainant's submission, if indeed it goes as far as this, that in respect of this incident she had as a member of the Staff Council an immunity from disciplinary measures and reprimands. When she is present at a meeting of the FAO Council or of its committees a staff representative must behave with the same propriety as any other staff member. If there was here an act of misconduct, the fact that it was committed by a staff representative for a serious purpose mitigates the offence but does not extinguish it.

27. The Appeals Committee did not attach importance to the complainant's mounting of the podium without permission: neither does the Tribunal. But the Appeals Committee reached the conclusion that the Deputy Director-General was entitled to reject a note presented at an untimely moment and that it was the complainant's persistence in her action which led to an interruption of the Council meeting: such behaviour was incorrect. It seems clear to the Tribunal that the complainant was in the wrong either because on her own version she interrupted the Chairman to ask him if she could deliver the note or on the Organization's version by refusing to leave the podium. The question is whether in all the circumstances her acts amounted to misconduct. The Director-General has made some allowance for the circumstances. The only ground on which the Tribunal could interfere with his conclusion that this was a case of misconduct is that he treated it as another instance of misconduct and

viewed it in the light of the complainant's disregard of the warning given on 2 February 1973. Since the Tribunal is setting aside the Director-General's conclusions about the earlier incident, it is clear that the second reprimand cannot in any event remain on the complainant's record in its existing form. The Tribunal considers therefore that the second reprimand should be set aside and that the matter should be remitted to the Director-General so that he can consider whether the incident of 15 June is sufficiently grave to be by itself deserving of a reprimand. If he does so consider the Tribunal thinks that the reprimand ought to be phrased on the lines recommended by the Appeals Committee and should be for having acted in such a manner as to lead to an interruption of the proceedings of the FAO Council in committee on 15 June 1973.

DECISION:

For the above reasons, the Tribunal

1. Quashes the two decisions of the Director-General given on 4 March 1975.
2. Directs that the letters and memoranda from the Director-General to the complainant dated 2 February 1973, 19 February 1973 and 22 June 1973 be removed from the complainant's record.
3. Directs that the letters and memoranda of 22 June and 25 July 1973 be removed from the complainant's record and remitted to the Director-General for reconsideration and so that he may, if he thinks fit, reprimand the complainant for having acted in such a manner as to lead to an interruption of the proceedings of the FAO Council in committee on 15 June 1973.

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.

M. Letourneur
André Grisel
Devlin

Roland Morellet