

## THIRTY-SEVENTH ORDINARY SESSION

### *In re* LORD

#### Judgment No. 284

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the United Nations Food and Agriculture Organization (FAO) drawn up by Mr. Edgar Lord on 30 April 1975 and brought into conformity with the Rules of Court on 8 August 1975, the FAO's reply of 6 November 1975, the complainant's rejoinder of 31 December 1975, supplemented on 4 February 1976, the FAO's surrejoinder of 11 February 1976 and the FAO's communication of 26 February 1976;

Considering Article II, paragraph 5, of the Statute of the Tribunal, FAO Manual provisions 303.112, 308.41, 315.322 and 340 and Administrative Circular 71/25 of 1 March 1971;

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, who is an economist, joined the staff of the FAO on 25 February 1961 at grade P.2. He was promoted to grade P.3, step IV, and transferred to the Nutrition Division on 1 September 1971. He holds a continuing appointment and at the time of lodging his complaint was with the Agricultural Division in Addis Ababa.

B. The complainant would normally have become entitled to a within-grade salary increment on 1 April 1973. According to the usual procedure the Personnel Division asked the Director of his division to make recommendations as to granting him the increment. In two memoranda dated 16 and 23 February 1973 the Director of his division explained to the Director of Personnel that because of the complainant's unsatisfactory performance he did not recommend payment of the increment. The complainant was given copies of the memoranda. The officer-in-charge in the Personnel Division informed the complainant by minute of 28 February 1973 that his increment would be withheld for at least three months and in any case until certification of his satisfactory performance was given.

C. By memorandum of 9 March 1973, revised on 13 March, the complainant appealed to the Director-General against that decision on the grounds that it had been based on false charges and allegations by his supervisors. By letter of 22 March 1973 the Assistant Director-General for Administration and Finance replied on the Director-General's behalf dismissing the appeal and informing the complainant that he had examined his supervisor's evaluation in the light of the complainant's own representations and was satisfied that the criticisms were neither unfair nor unfounded. On 4 April 1973 the complainant appealed to the FAO Appeals Committee. In its report of 10 January 1975 the Committee unanimously held that it had not been established that the decision to withhold the complainant's increment was due to prejudice towards him or that the procedures and machinery had been improperly used. It accordingly recommended the Director-General to dismiss the appeal. In view of the Committee's findings the Director-General informed the complainant by letter of 19 February 1975 that he disallowed the appeal. That is the decision the complainant now impugns.

D. According to the complainant's interpretation of Administrative Circular 71/25 of 1 March 1971, which states the procedure for granting annual increments, the extension of his assignment in his division to 30 April 1973 was tantamount to a certificate of satisfactory performance warranting payment of his increment. He contends that the procedure prescribed in the circular was not fully observed in his case inasmuch as a memorandum explaining why his performance was thought unsatisfactory was not communicated to him before being forwarded to the Personnel Division. The Director-General and the Appeals Committee, he maintains, were prejudiced in that they gave greater weight to his supervisors' version of the facts than to his own and took account of facts which fell outside the period to be taken into account for the purpose of granting his increment. Lastly, certain papers should be removed from his personnel file because he was never given copies and they had no relevance to his file.

B. The complainant accordingly asks the Tribunal to quash what he regards as an "unjust" decision by the

Administration, upheld by the Appeals Committee, to withhold the increment due to him on 1 April 1975; to order its payment with effect from that date; to order the removal of all detrimental papers placed "secretly" in his personnel file of which he did not receive copies from the author on the date of writing; and to order the FAO to compensate him for any damage which might have been done to his career "because of this unjust procedure".

F. The FAO maintains that the Director-General's decision to withhold the increment was lawful: the proper procedures were followed; the impugned decision was based on objective assessment of all the relevant facts, including the complainant's observations on his supervisors' adverse reports; there is no evidence to show that the Director-General drew unwarranted conclusions from the facts at his disposal; and the decision was not tainted with prejudice or any other extraneous factor. The papers should not be removed from the complainant's personnel file since the FAO Administrative Manual provides for the filing in a staff member's personnel file of any papers which may shed light on the reasons for withholding an increment. The complainant's claim for compensation should therefore be dismissed.

G. The Organisation asks the Tribunal to dismiss the complaint.

#### CONSIDERATIONS:

As to the withholding of the increment:

1. A staff member is entitled after every twelve months of satisfactory service to receive an increment to his salary unless it is not endorsed by his division director, and the Director AFP, i.e. of the Personnel Division, is satisfied that the withholding of the increment is justified. This is the effect of Manual provision 315.322. There is in force an Administrative Circular No. 71/25 originating in the Personnel Division, which sets out the procedure to be followed so as to ensure that the question is given proper consideration in advance of the date when the increment would be due. A circular of this character does not, as do the Staff Regulations, form part of a staff member's terms of appointment and so as a general rule a departure from its provisions does not of itself give him any right to relief. This is not to say that the circular is invariably irrelevant. Thus, for example, if a circular prescribes a certain procedure to be followed, the Tribunal will consider, not necessarily whether the procedure has been exactly followed, but whether any departure from it has prejudiced the staff member in a way that affects his rights.

2. On 28 February 1973 the officer-in-charge AFP notified the complainant in writing that his Division Director did not recommend the grant of the increment, that he, i.e. the officer-in-charge, considered that the Division Director was justified and accordingly that the increment, which would have been due on 1 April 1973, would be withheld. Both the Division Director and the complainant's direct supervisor had previously made in writing detailed evaluations of the complainant's service, to which he had replied likewise in writing, and it is not disputed that on the basis of such evaluations his service could not be regarded as satisfactory. The complainant has challenged the evaluations at great length and his objections have been considered by the Director-General who, after receiving the advice of the Appeals Committee, upheld on 19 February 1975 the decision to withhold the increment. In such circumstances the principle which the Tribunal applies is that it will not interfere, except upon particular and limited grounds such as prejudice or incorrect appreciation of facts or formal or procedural irregularity, with decisions of the Director-General. The following objections taken by the complainant might, if substantiated, fall within these particular and limited grounds:

(1) that the procedure laid down in the Circular was not followed;

(2) that the evaluation reports contained admitted errors of fact;

(3) that the authorities concerned from the Director-General downwards had regard to events outside the period to which the increment related;

(4) that the same authorities did not grant to the complainant an oral hearing.

3. As to the first, the Tribunal is satisfied that the complainant was not in any way prejudiced by any departure from the procedure. As to the second, the Tribunal is satisfied that the errors of fact were minor and not material to the assessment. As to the third, it is quite possible that events outside the period may cast light upon the value of the services during the period; the Tribunal is satisfied that it was the services during the relevant period that were being evaluated. As to the fourth, the officer-in-charge AFP and subsequently the Director-General had before them all the relevant documents which the complainant also had seen and they had also the complainant's written

replies. The question which they had to consider was not whether the complainant's evaluation of his services was to be preferred to that of his division director, but whether the latter was unjustified. On such a question a staff member cannot claim a right to an oral hearing; this must be within the discretion of the authority concerned and normally it would not be necessary. Accordingly, the Tribunal considers that the complainant's objections to the assessment cannot be sustained.

As to the request for the removal of all detrimental documents from the complainant's file:

The documents about which the complaint is made consist of two memoranda from the complainant's supervisor to his division director. The first is dated 10 July 1972 and relates to his future employment; the second is dated 2 May 1973 and consists of the supervisor's comments on the complainant's memorandum of appeal from the decision to withhold his increment. These memoranda were properly placed in the complainant's confidential personnel file in accordance with Manual provision 340.112. Under Manual provision 340.322 the complainant is entitled upon request to receive copies of them and he has in fact had copies. There is no rule authorising their removal on the ground that they are detrimental.

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 4 October 1976.

M. Letourneur  
André Grisel  
Devlin

Roland Morellet