

EIGHTH ORDINARY SESSION

***In re* POULAIN D'ANDECY**

Judgment No. 51

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the Food and Agriculture Organization of the United Nations drawn up by Miss Poulain d'Andecy, on 7 March 1960, the organisation's reply of 8 June 1960, the documents and the additional memorandum which the Tribunal ordered the organisation to produce;

Considering Article II, paragraph 5 of the Statute of the Tribunal, Regulations 301.00, 301.121 and 301.134 of the organisation's Staff Regulations and Rules 302.30121, 302.30122 and 302.3021 of the organisation's Staff Rules;

Considering the applications to intervene lodged by:

Miss Alcantu, Maria del Pilar,

Miss Alexander, Doreen Iris,

Miss Batty, Joan Muriel,

Miss Benoît, Solange,

Mrs. Béranger Pompam, Claude Jeanne,

Miss Beritault, Berthe Micheline,

Miss Bernanrd, Simone Jeanne,

Mrs. Billiet-Belluomini, Odile Marie,

Mr. Blair, F.-J.,

Miss Bourdier, Marguerite,

Miss Boutry, Ginette,

Miss Briner, Annie,

Miss Brunelle, Suzanne,

Miss Cabezali, Matilde,

Miss Calderbank, Narina,

Mrs. Capparucci, Rhoda,

Miss Cassidy, Shelagh Mary,

Miss Cattle, Jennifer Suzan,

Miss de la Celle, Bérangère,

Miss Claarkson, Rosemary,

Miss Connolly, Nora H.,
Mrs. Di Corpo, M.,
Miss Croset, Micheline,
Mr. Darwall, Richard,
Miss Esparza, Alicia,
Miss Fernandez, Angustias,
Miss Gaffney, Josephine,
Miss Garcia Moran, Concepcion,
Miss Geeraert, Geneviève,
Mrs. Gil, Carmen,
Miss Golay, Denise,
Miss Grieve, Jane Nelson,
Miss Habeiche, Odette,
Miss Hemsted, Clara Joan,
Mrs. Hernandez Bravo, Elena,
Miss Hervey, Norah Adélaïde,
Miss Hudson, Helen,
Miss Jamot, Odette,
Mrs. Lams-Colitti, Marie-Thérèse,
Miss Lee, Soo,
Miss Mirville, Marcelle,
Mrs. Mora de Muenteferino, Carmen,
Miss Mosse, Bridget,
Miss Murphy, Winifred,
Miss Nakano, Mary,
Miss Olea Cortes, Maria,
Miss Perez Ortis, Amalia,
Miss Potter, Doris,
Miss Richardson, Ann,
Miss Roche, Edith,
Miss Salem, Sylvia,

Miss Sanders, Pamela Jacqueline,

Mrs. Schindler, Micheline,

Miss Simmonds, Marie,

Miss Slingsby, Angela,

Mrs. Snoeck Henckemans, Liesbeth,

Miss Spinks, Jean Margaret,

Miss Sutton, Pamela,

Miss Taillefer, Paulette,

Mrs. Testaud de Marchainbassino, Brigitte,

Mrs. Thibault, Andr ee,

Mrs. Tyszynski, Rite,

Miss Valmaure, Paule,

Miss Varela, Pilar,

Miss Webb, Pamela Eilen,

Miss Webb, Veronica,

Mrs. Wilson-Ercoli, Daphne,

Miss Zinke, Ilse;

Having heard Mr. Jacques Mercier, counsel for complainant and Mr. Georges Saint Pol, agent of the organisation, in public sitting, on 15 September 1960;

Considering that the pertinent facts at issue are the following:

A. Complainant was appointed by the organisation as a non-locally recruited official of the general service category by letter of appointment dated 17 April 1951. Said letter provided that complainant would receive, in addition to an annual salary of 880,000 lire, a non-resident's allowance of 365,000 lire a year. The amount of the non-resident's allowance was subsequently raised and was fixed at 450,000 lire on 30 September 1952.

B. In the course of the 31st Session of the Council of FAO, held in Rome from 15 to 24 June 1959, the Director-General submitted to the Council proposals concerning the revision of the salary schedule of the general services category staff, and the determination of the amount of the non-resident's allowance for officials serving in Rome.

These proposals, which were approved by the Council, provided for an increase in the Rome general service salary schedule amounting on an over-all basis to approximately 9 per cent and the establishment of the non-resident's allowance for non-local officials at 390,000 lire per annum, the whole to be put into effect retroactively to 1 January 1959. In Administrative Memorandum No. 842, of 26 June 1959, the Director-General promulgated amendments to the Staff Regulations approved by the Council, altered the salary schedule for officials in the general service category in Rome and fixed the amount of the non-resident's allowance at 390,000 lire per annum. Under the provisions of this memorandum, the changes relating to salary schedules and the non-resident's allowance took effect retroactively from 1 January 1959, a salary adjustment, against which was set off the reduction in the non-resident's allowance, for the period 1 January to 30 June 1959, being made at the time of the payment of July salaries.

C. On 14 July 1959, complainant challenged the justification of applying to her the measures relating to salary scales and non-resident's allowance provided for in the Administrative Memorandum on the ground that the reduction of the non-resident's allowance constituted a breach of her contractual rights. After consulting the Appeals Committee, the Director-General rejected complainant's appeal in a letter of 7 December 1959. In her complaint of 7 March 1960, Miss Poulain d'Andecy prays the Tribunal to rescind the decision of 7 December 1959, together with the decision of 26 June 1959, in so far as it reduced the level of the non-resident's allowance which she was receiving. The organisation prays that the complaint be dismissed, as not well-founded.

IN LAW

1. The complaint prays for the rescinding of a decision of the Director-General of 7 December 1959, on the grounds that this decision was in violation of Staff Regulation 301.121. In accordance with the provisions of paragraph 5 of Article II of its Statute, the Tribunal is competent to hear complaints alleging non-observance, in substance or in form, of provisions of the Staff Regulations of the organisation. Therefore, the Tribunal is competent to adjudicate on the complaint.
2. Staff Regulation 301.121 provides that the Staff Regulations may be supplemented or amended by the Conference or Council, without prejudice to the acquired rights of staff members. The organisation contends that by virtue of the provisions of Staff Rules 302.30121, 302.30122 and 302.3021, the amount of the non-resident's allowance may be altered and that therefore the entitlement to this amount is not the subject of acquired rights. The Staff Regulations, however, are approved by the Council and merely promulgated by the Director-General, whereas the Staff Rules are established by him. It follows that the provisions of the Regulations prevail over those of the Rules and that hence if the entitlement to the amount of the non-resident's allowance at the level at which it was fixed was the subject of an acquired right within the meaning of the Regulations, it should be treated as such even though not so recognised under the Rules.
3. Any authority is bound by its own rules for so long as such rules have not been amended or abrogated. While the Council had referred to it by the Director-General the latter's proposals for the reduction of the non-resident's allowance and although it approved these proposals, it did not thereby amend Staff Regulation 301.121 which remains in force and continues to be fully binding in particular as regards the entrenched acquired rights clause. It is therefore necessary to enquire whether the reduction of the non-resident's allowance prejudiced the acquired rights of complainant.
4. In order to resolve this question, the nature of the non-resident's allowance must be determined. This is an additional remuneration the object of which is to compensate for the disadvantages arising out of expatriation, in order to permit the recruitment and retention of staff who, by virtue of the qualifications required, cannot be recruited locally. Remuneration under this head is subject to variation and is not of a personal nature. On the one hand it is determined after taking into account differences in living standards between the international official's duty station and other countries. Further, the level at which it is fixed will depend upon factors external to the organisation and its staff; this is shown by the fact that it is the same for all the non-locally recruited staff in the general service category. Under these conditions the amount of the non-resident's allowance cannot be the subject of acquired rights and the complaint must fail on this point.
5. Conversely, the entitlement to the allowance actually paid to complainant at the former rate constituted an acquired right within the meaning of Staff Regulation 301.121, which, under the most restrictive interpretation, has the same scope as the principle of the prohibition of retroactivity. No doubt, the organisation contends that while the non-resident's allowance was reduced with retroactive effect for the period from 1 January to 30 June 1959, complainant enjoyed during the same period the benefit of a retroactive salary increase of a greater amount. However, salary and non-resident's allowance cannot be assimilated in every respect. Salary is the remuneration received by an official for his work, that is to say in direct consideration of the services he has rendered. On the other hand, as stated above, the non-resident's allowance has a different object. In consequence a salary increase cannot be set off against a reduction of the allowance.

In view of the foregoing, the decision impugned is illegal in so far as it retroactively cancels the entitlement to the non-resident's allowance at the level at which it was fixed before 26 June 1959 and the complaint is well-founded on this point.

6. The interveners hold the same rights as complainant and therefore their intervention must be declared receivable

and the benefit of this judgment extended to them.

7. Having regard to the fact that the complaint is well-founded and the importance of the matters upon which the Tribunal is called upon to adjudicate, it is appropriate that the organisation bear the full amount of the costs which complainant and the interveners have incurred in this case, such amount to be taxed by the President of the Tribunal.

DECISION

1. The decision of the Director-General of 7 December 1959 together with that of 26 June 1959 is rescinded, in so far as it provides for a retroactive reduction of the amount of the non- resident's allowance received by complainant.
2. There shall be repaid to complainant an amount equal to the amount by which the non-resident's allowance was retroactively reduced for the period from 1 January to 30 June 1959, together with interest at 4 per centum.
3. The interveners shall be entitled to rely on the rights recognised to complainant under this judgment.
4. The full costs incurred by complainant and the interveners in this action, the amount of which shall be taxed by the President of the Tribunal, shall be borne by the organisation.
5. The remainder of the complaint is dismissed.

In witness of this judgment, delivered in public sitting on 23 September 1960 by the Right Hon. Lord Forster of Harraby, K.B.E., Q.C.; President, Mr. Maxime Letourneur, Vice-President, and Mr. André Grisel, Judge, the aforementioned have hereunto subscribed their signatures, as well as myself, Lemoine, Registrar of the Tribunal.

Signatures:

Forster of Harraby
M. Letourneur
André Grisel
Jacques Lemoine