

FIFTY-SIXTH ORDINARY SESSION

In re HERR

Judgment No. 662

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed against the Food and Agriculture Organization of the United Nations (FAO) by Mr. Robert Wayne Herr on 3 August 1984 and corrected on 9 October, the FAO's reply of 20 November, the complainant's rejoinder of 4 February 1985 and the FAO's surrejoinder of 11 March 1985;

Considering Article II, paragraph 5, of the Statute of the Tribunal and FAO Manual provisions 331.31, .32 and .51;

Having examined the written evidence and disallowed the complainant's application for oral proceedings;

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

A. The complainant, a Canadian, joined the staff of the FAO in Rome on 18 September 1982 under a three-year appointment and was appointed manager of the FAO Credit Union at grade P.4. He was under the administrative supervision of the Assistant Director-General, Administration and Finance, and exercised his functions under the control and direction of the Board of directors of the Credit Union. The officers of the Union soon felt displeased with his performance, and although his appointment was confirmed at the end of the first year's probation, there was still dissatisfaction. He was said to have a poor grasp of the nature of his duties, to think too highly of himself and to pay too little heed to those with greater experience. The upshot of talks with him and of several meetings of the Board was a detailed minute addressed to him on 2 November 1983 by the Chairman of the Board, who said, among other things, "Your actions and errors have shaken the confidence we have in your management and judgment", and informed him of special arrangements to keep him under close scrutiny. Further difficulties arose. On 16 January 1984 the complainant submitted his resignation to the Chairman, and by a letter of 13 February the Personnel Division informed him that it was accepted and would take effect on 15 June 1984. But there was severe disagreement over the terms of his separation from service. On 28 February he sent a long letter to the Director-General justifying his behaviour, setting out his grievances and stating his claims. He left the FAO on 15 June. In his complaint he is challenging the implied decision to reject his claims.

E. The complainant traces the history of the dispute. He alleges that his position in the Credit Union had become so awkward and his standing so low that he had no choice but to resign. He believes that the way in which he was treated on separation was unfair. What happened was damaging to his career, financially harmful, and distressing to him and his family. Having got no answer to his letter of 28 February 1984 he may take it that the claims therein are rejected and may challenge the implied decision to reject them. He claims damages amounting to the equivalent of his P.4 salary for the period from 16 June 1984 to 18 September 1985, or 37,576 United States dollars, plus reimbursement of the cost of selling his home in Winnipeg, or \$6,540, making a total of \$44,116.

C. The FAO replies that the complaint is irreceivable on the grounds of failure to exhaust the internal means of redress, both under Article VII(1) of the Statute of the Tribunal and under FAO Manual provision 331.51: "An appellant who is not satisfied with a final decision of the Director-General made pursuant to Staff Rule 303.1311 or 303.138 may lodge a complaint with the Administrative Tribunal." The complainant has not followed any of the internal appeal procedures. Though he received no answer to his letter of 28 February 1984, he neither lodged an appeal with the Director-General under Manual provision 331.31 nor an appeal with the Appeals Committee under provision 331.32. He therefore obtained no final decision from the Director-General. Besides, the particular claims in his complaint were not set out even in his letter of 28 February 1984. The FAO also argues the merits, contending that nothing was done in breach of the terms of his appointment or of the Staff Regulations. On his resignation he received his full entitlements and has no right to any others.

D. In his rejoinder the complainant discusses in further detail the events which preceded his departure and defends his conduct as manager of the Credit Union. As to receivability, he maintains that his present claim to payment of salary up to 18 September 1985 did appear in his letter of 28 February 1984.

E. In its surrejoinder the FAO enlarges on its submissions on receivability. Since no one had ever promised the

complainant that if he resigned he would be paid up to 18 September 1985 he could not possibly have intended to ask for such payment in his letter of 28 February 1984. The FAO considers that the rejoinder fails to address the material issues and says nothing to invalidate the conclusions in its reply.

CONSIDERATIONS:

The complainant was employed by the Organization under a contract for a fixed term of three years due to expire on 17 September 1985. His place of work was in Rome and it appears from his statement of facts that at the time of his appointment he sold his home in Winnipeg. On 16 January 1984 he tendered his resignation to take effect on 15 June 1984, i.e. fifteen months before the date of expiry. His resignation was accepted. Thereafter he discharged no duties under the contract and was paid no salary.

By virtue of Article II(5) of its Statute the Tribunal is competent to hear complaints alleging non-observance of the terms of appointment of officials of the defendant organisation or of the provisions of its staff regulations.

On 3 August 1984 the complainant filed a complaint in which he asked for an order that he should be paid his salary for the period from 16 June 1984 to 18 September 1985 and reimbursed the cost of selling his home in Winnipeg. The complaint does not allege the non-observance of any term of his appointment or of any staff regulation. The Tribunal is therefore not competent to hear it.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. André Grisel, President of the Tribunal, the Right Honourable the Lord Devlin, Judge, and Mr. Héctor Gros Espiell, Deputy Judge, the aforementioned have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 19 June 1985.

André Grisel

Devlin

H. Gros Espiell

A.B. Gardner