

Registry's translation, the French text alone being authoritative.

FIFTY-EIGHTH ORDINARY SESSION

In re LOROCH (No. 4)

Judgment No. 733

THE ADMINISTRATIVE TRIBUNAL,

Considering the fourth complaint filed against the Food and Agriculture Organization of the United Nations (FAO) by Mr. Kim Lorocho on 12 July 1985;

Considering Articles II, paragraph 5, and VII, paragraph 1, of the Statute of the Tribunal, Article 8, paragraph 3, of the Rules of Court and FAO Staff Rules 303.1311 and 303.1313;

Having examined the written evidence;

CONSIDERATIONS:

The facts

1. For five years the complainant served the FAO in a post which he had to leave on 10 October 1974 on medical grounds.

On 30 January 1975 he applied for continued membership of the FAO's sickness insurance fund. He repeated his claim on 30 October. The Director of the Personnel Division rejected it on 19 December under the material rules.

The complainant appealed to the Director-General on 11 March 1985 against the decision of 19 December 1975. The Deputy Director-General in charge of Administration and Finance rejected the appeal on 6 May 1985 on the grounds that it was clearly out of time.

The complainant is challenging that decision, thereby claiming affiliation to the fund.

Receivability

2. Article VII(1) of the Statute of the Tribunal stipulates that, for his complaint to be receivable, the complainant shall have exhausted the internal means of redress.

The complainant failed to do so. According to FAO Staff Rule 303.1313 a staff member who wishes to appeal against the reply received from the Director-General, other than a reply constituting a final decision, or if no reply is received, may submit an appeal to the Chairman of the Appeals Committee through its Secretary. According to Rule 303.1311 a reply from the Director-General shall constitute a final decision only if there is express notification to that effect. Since there had been no final decision within the meaning of that rule the complainant was required to submit his claim to the Appeals Committee. He failed to do so, and his complaint is therefore irreceivable.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. André Grisel, President of the Tribunal, Mr. Jacques Ducoux, Vice-President, and the Right Honourable the Lord Devlin, Judge, the aforementioned have signed hereunder, as have I, Allan Gardner, Registrar.

Delivered in public sitting in Geneva on 17 March 1986.

(Signed)

André Grisel

Jacques Ducoux

Devlin

A.B. Gardner

Updated by PFR. Approved by CC. Last update: 7 July 2000.