

SIXTY-FIFTH SESSION

***In re* MARSALU**

Judgment 917

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Miss Denise Marcelle Antoinette Marsault against the Food and Agriculture Organization of the United Nations (FAO) on 30 December 1987 and corrected on 14 January 1988, the FAO's reply of 13 May and the letter of 9 June 1988 from the complainant's counsel informing the Registrar that his client did not wish to file a rejoinder;

Considering Articles II, paragraphs 5 and 6, VII and VIII of the Statute of the Tribunal, FAO Staff Rules 302.21 and 303.131 and FAO Manual Section 331;

Having examined the written evidence and disallowed the complainant's application for the hearing of witnesses;

Considering that the facts of the case and the pleadings may be summed up as follows:

A. The complainant, a French citizen born in 1925, joined the staff of the FAO in Rome in 1951 as a shorthand typist. Starting at grade 3 in the General Service category (G.3), over the years she changed posts several times and was steadily promoted. By 1974 she had reached grade G.6. On 1 January 1978 she became an "administrative assistant" and on 1 January 1980 she was promoted to G.7. In April 1981 she was transferred to the Social Security Group of the Personnel Division.

Since 1978 she had been seeking promotion to a post in the Professional category and had made many unavailing attempts to get one, including two applications for review of her grading. Some time in the autumn of 1984 she had talks with the Director of the Personnel Division and made known her wishes. In a minute of 19 January 1985 he told her she was to be transferred to the Staff Development Group in his division, adding that she might apply for any vacant post in the Professional category she thought she was qualified for. She was transferred to her new Group on 21 January 1985. She did apply for Professional category posts but was unsuccessful. In minutes of 16 June and 19 August 1986 to the Director of Personnel she accused him of breaking a promise he had made in her talks with him that she would be given such a post, and she related incidents which she said showed malice towards her, particularly on her supervisors' part.

On 16 November 1986 she submitted an appeal to the Director-General asking for review of her administrative and financial position and claiming financial compensation for moral injury. By a letter of 16 December the Assistant Director-General in charge of Administration and Finance rejected her claims and on 14 January 1987 she went to the Appeals Committee, claiming compensation for loss of salary and for moral injury. She retired from the Organization on 31 May 1987. In its report of 10 July 1987 the Committee unanimously recommended rejecting her appeal and by a letter of 1 October 1987, the decision she impugns, the Deputy Director-General informed her that the Director-General had done so.

B. The complainant gives a detailed account of her career at the FAO and of her difficulties with successive supervisors and with the Personnel Division in her last ten years of service. She alleges that unfair and humiliating treatment and the "psychological warfare" waged against her over the years caused her grave moral injury. Much of the hostility towards her was due to a mistaken belief that she was a communist. She was time and again subjected to unwarranted reproof and to insult, any initiative she showed was crushed, she was given demeaning work or none at all, the atmosphere was unendurable, and she was refused proper recognition of her services, which deserved a grading in the Professional category. She was never even formally transferred but merely sent packing to the Staff Development Group.

She alleges breach of the Standards of Conduct in the international civil service and of the principle, enshrined in the Tribunal's case law, that an organisation must treat its staff considerately and with heed to their dignity.

She submits that in 1976 or 1977 her then supervisor, Dr. Nordlund, the chief of the medical service, promised her a post in the Professional category; so did the Director-General himself and, in the autumn of 1984, the Director of Personnel.

She alleges breach of Staff Rule 302.21 on "classification standards". She carried out many duties and assignments that demanded a Professional grading even though she was kept in the General Service category. She cites examples of such duties, which she says were not taken into account when she applied for review of her grading.

She applies for the hearing of evidence from the Director-General, the Director of Personnel and 15 other serving and former officials to bear out her allegations of a promise. She seeks awards of 50,000 United States dollars in damages for material and moral injury and of \$7,000 in costs.

C. In its reply the Organization gives its own account of the complainant's career. It submits that her pleadings rest on unproven suppositions and allegations and disclose no cause of action. The malicious plot she saw all about her was the figment of an overheated imagination and a suspicious mind. She did serve the Organization loyally and well for many years, but she got fair treatment in return and, in particular, steady promotion to the top of the General Service category. The Staff Regulations and Staff Rules were fully and correctly applied. She may have cherished ambitions, but she had no right in law to have them fulfilled.

She offers no specific evidence of any commitment the FAO ever entered into. First, though Dr. Nordlund did propose making her post P.2, it was eventually graded G.7; besides, the fact that she was on it does not mean that she would have got the Professional grading even if it had been regraded P.2. Secondly, the Director-General made no commitment towards her, even though at his suggestion unsuccessful attempts were made to find a Professional category post. Thirdly, the Director of Personnel denies making her any promise in the autumn of 1984 and she offers no evidence to suggest that he did.

Her accusations of hostility on the grounds of a belief in her adherence to communism are unproven and, besides, groundless.

The Organization invites the Tribunal to dismiss her claims as devoid of merit.

CONSIDERATIONS:

Receivability

1. On 16 November 1986 the complainant, who was then soon to retire from the FAO, wrote to the Director-General asking in accordance with FAO Manual provision 331.311 for review of her administrative and financial position. The Administration having rejected her claims by a letter of 16 December, she submitted an appeal under Staff Rule 303.131 and Manual Section 331. In its report of 10 July 1987 the Appeals Committee, to which her appeal had been referred, recommended rejecting it and the final decision of 1 October 1987 did so. Having thus exhausted the internal means of redress, the complainant was free, under Article VII(1) of the Statute of the Tribunal to file a complaint challenging that final decision, and she did so on 30 December 1987, within the time limit set in Article VII(2) of the Statute.

Although the complainant left the employment of the Organization on retirement on 31 May 1987, she still has access to the Tribunal under Article II(6)(a) of its Statute.

Her complaint is therefore receivable.

The purpose of the suit

2. The complainant is claiming payment of 50,000 dollars in damages for material and moral injury on the grounds of the Organization's wilful breach of the Staff Regulations and Staff Rules and its demeaning treatment of her for a period of over ten years. She made that claim in her internal appeal, and on the Appeals Committee's recommendation the Director-General rejected it in his final decision of 1 October 1987.

According to Article II(5) of its Statute the Tribunal is competent to hear complaints "alleging non-observance, in substance or in form, of the terms of appointment of officials and of provisions of the Staff Regulations" of the

FAO, among other organisations, and under Article VIII the Tribunal shall, if satisfied that a complaint is well-founded, order the rescinding of the decision impugned or the performance of the obligation relied upon. If such rescinding or execution is "not possible or advisable", the Tribunal shall award the complainant compensation for injury.

3. The complainant has failed, however, to identify any decision of the Organization's which in her submission constitutes breach of the terms of her appointment or of the FAO Regulations or Rules and which causes her injury. The Tribunal will therefore not entertain her claims under that head.

The complainant's career

4. As the Appeals Committee observed in its report, the complainant pursued a normal career with the Organization, rising from grade G.3, which she was granted on appointment, to G.7 at the date of retirement. The successive promotions she was granted were in accordance with the Regulations and Rules. Although her desire to be appointed to the Professional category in a grade P.1 or P.2 post was not fulfilled, she had no right in law to obtain, and the FAO had no duty to grant her, such appointment.

5. There is, moreover, no evidence before the Tribunal to support her contention that she was promised such appointment and, even supposing such evidence were adduced, the Organization would still not necessarily be under any obligation.

6. As for her charges of discrimination against her on political grounds and demeaning treatment, it is true that if they were proven there would be breach of principles that govern the international civil service, which forbid discrimination and require that all members of the staff be treated considerately and with respect for their dignity. But there is no evidence before the Tribunal to suggest that the complainant was in any way discriminated against or humiliated, that any abnormal impediment was put in the way of her career, or that there was any breach of the principles of the international civil service.

7. The Tribunal concludes on the evidence before it relating to the complainant's career that her complaint is devoid of merit and that her claims must therefore fail.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment by Mr. Jacques Ducoux, President of the Tribunal, Tun Mohamed Suffian, Vice-President, 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 8 December 1988.

(Signed)

Jacques Ducoux
Mohamed Suffian
H. Gros Espiell
A.B. Gardner