

## EIGHTIETH SESSION

### *In re* WASSEF (No. 7)

#### Judgment 1485

THE ADMINISTRATIVE TRIBUNAL,

Considering the seventh complaint filed by Mr. Maher Nabih Wassef-Gerges against the Food and Agriculture Organization of the United Nations (FAO) on 14 December 1994, the FAO's reply of 1 February 1995 and the complainant's letter of 21 February 1995 telling the Registrar of the Tribunal that he did not wish to enter a rejoinder;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions and decided not to order hearings, which neither party has applied for;

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

A. The complainant's record of employment at the FAO, which he left on 7 January 1994, is set out under A in Judgment 1401 on his first and second complaints.

On 7 January 1994 he submitted an appeal to the Director-General claiming, among other things, payment of daily subsistence allowance and salary; entitlements to annual leave; and a continuing appointment at grade P.4 or, failing that, an award of moral damages. On 11 January he sent the Director-General further documents and thereby completed his appeal.

By a letter of 9 March 1994 the Assistant Director-General in charge of the Administration and Finance Department rejected his claims on the Director-General's behalf.

On 29 March 1994 he put his case to the Appeals Committee under FAO Staff Rule 303.1313 and Manual section 331.

B. The complainant submits that the FAO has infringed his rights and subjected him to "cheating and trickery". As in earlier complaints he finds fault with the Appeals Committee, which should, he maintains, have reported within six months of the filing of his appeal.

He asks the Tribunal to:

"1. award him the maximum of the compensation claimed of US \$ 5 Millions for the inflicted atrocities, and

2. instruct the Administration of the Food and Agriculture Organization of the United Nations to raise, within two weeks from the receipt of the judgement subject to the penalty of another US Dollar Two Millions, the following separate payment authorizations ... :

2.1 Payment Voucher for 6 days' per diem for briefing in Rome, for my Libyan assignment, from 1 to 7 April 1982 amounting to US \$ 348.00 (April 1982 rate 58 X 6),

2.2 Payment Voucher for 15 days' per diem for debriefing in Rome, for my Libyan assignment, from 1 to 16 July 1984 amounting to US \$ 1,110.00 (August 1983 rate \$ 66/day, July 1984 rate estimated by Complainant to be around \$ 74/day),

2.3 Payment Voucher for 15 days' salary for debriefing in Rome, for my Libyan assignment, during July 1984 amounting to US \$ 2,000.00 (indicative lump sum re salary only),

2.4 Payment Voucher for 3 days' per diem for briefing in Rome, for my Saudi assignment, from 17 to 20 December 1987 amounting to US \$ 375.00 (December 1987 rate estimated by Complainant to be around \$ 125/day),

2.5 Payment Voucher for 13 days' per diem for debriefing in Rome, for my Saudi assignment, during February

1991 amounting to US \$ 2,470.00 (\$ 190/day X 13),

2.6 Payment Voucher for 13 days' salary for debriefing in Rome, for my Saudi assignment, during February 1991 amounting to US \$ 2,500.00 (indicative lump sum re salary only),

2.7 Payment Voucher for 7 days' per diem in Paris, for accompanying wife during medical evacuation and first cure, from 2 to 9 March 1992 amounting to US \$ 1,491.00 (\$213/day X 7),

2.8 Payment voucher for 5 days' per diem for briefing in Rome, for my Tchad assignment from 26 June to 1 July 1991, amounting to US \$ 980.00 (\$ 196/day X 5),

2.9 Payment Voucher with a detailed calculation for the difference due to me as a result of the recognition of my following entitlements and as a consequence;

a) the credit of my annual leave balance with the 7 days in Paris for accompanying wife during medical evacuation and first cure in March 1992, previously deducted from my annual leave or the payment of an indicative lump sum of \$ 1,500.00,

b) the credit of my annual leave balance with the 9 compensatory days during my Saudi assignment in 1988, 1989 and 1990, or the payment of an indicative lump sum of \$ 1,800.00,

c) the credit of my entitlements with the difference due from the recognition of the period between the Saudi assignment and the Tchad assignment as leave without pay (the recalculation of my terminal emoluments based on the continuity of service which becomes more than five years), or the payment of an indicative lump sum of \$ 35,000.00.

2.10 Payment Voucher for the per diem in Rome, as a continuation of the Travel Authorization raised for my Repatriation Travel combined with medical evacuation in which payment of per diem was ended on 5/10/1993, for the period from 6/10/1993 to 23/12/1994 for the reasons detailed in this Complaint, and amounting to US \$ 74,831.00 details of which are;

a) 15 days with the rate up to 60 days, from 5 to 20.10.1993 i.e. \$ 219/day X 15 = \$ 3285.00

b) from 20.10.1993 until the date I am clinically cured i.e. 24.12.1993 is 65 days X \$ 166/day (reduced rate after 60 days) = \$ 10,790.00

c) from 24.12.1993 to 23.12.1994, a period of 12 months as per the hospital reports for physical inability to travel and for the non assignment of part time work due to ill health; 366 days X \$ 166/day = \$ 60,756.00

3. declare and confirm his continuity status, his right for a continuing status and post from as early as June 1986, and

4. award him the payment of a lump sum of US \$ 3,500 - for photocopies, postage, stationery, secretarial assistance, miscellaneous expenses, etc."

C. In its reply the FAO contends that the complaint is irreceivable because the complainant has failed to exhaust the internal remedies open to him. Contrary to what he assumes, Article VII(3) of the Tribunal's Statute is inapplicable because the Organization took an express decision on his claim and his internal appeal is pending. According to the case law he may not infer rejection from the mere absence of a final decision within sixty days of lodging an appeal.

#### CONSIDERATIONS:

1. The complainant submitted an appeal on 7 January 1994 to the Director-General of the FAO seeking the following relief:

(a) recognition by the Organization that an illness which he had contracted in August 1993 - hepatitis-B - had been service-incurred;

(b) the grant of additional sick leave for the period from 16 November 1993 to 6 January 1994 and from 7 January to 7 March 1994;

(c) the prevention of his impending separation from service, of which he said a member of the Organization's Personnel Division had orally informed him in November 1993;

(d) the payment of daily subsistence allowance and salary during periods of "briefing" and "debriefing" for assignments he had carried out from 1982 to 1990;

(e) the payment of daily subsistence allowance for the period of briefing prior to his assignment to Chad in June 1991;

(f) the payment of the same allowance for an additional period for the evacuation of his wife to Paris in 1992;

(g) the addition of nine days to his annual leave entitlement at the end of his assignment in Saudi Arabia in 1990;

(h) the grant of leave without pay in the six-month period between his assignments in 1990 and 1991;

(i) the payment of daily subsistence allowance for the period in which he was on sick leave from 6 October 1993 to 7 January 1994; and

(j) his immediate transfer from Chad to a continuing P.4 post at FAO headquarters in Rome, or the award of 5 million United States dollars as "moral compensation (general and punitive) for the 12 years of humiliation, discrimination, injustice, worry, preoccupations, psychological and moral harassments, deprivation of rights and entitlements and all the consequences for the future".

2. By a letter of 9 March 1994 the Assistant Director-General in charge of the Administration and Finance Department informed him that the Director-General had rejected, among others, the claims in his appeal of 7 January on the grounds that they were either irreceivable or devoid of merit. On 29 March he appealed to the Appeals Committee against the Assistant Director-General's letter of 9 March. The Organization filed a statement with the Committee on 20 May 1994 and, the complainant having waived his right to submit a counter-statement, the written submissions on his appeal closed. Without awaiting the Committee's report and the Director-General's final express decision on his internal appeal he submitted this complaint on 14 December 1994 against what he sees as the implied rejection of that appeal. The many claims he puts forward in his complaint are set out in B above and, for the sake of convenience, are identified below by the numbers that he himself gives them.

3. In its reply to the complaint the Organization submits that his complaint as a whole is irreceivable because he has not awaited the outcome of his internal appeal and so has failed to exhaust the internal means of redress and to obtain a final decision, as Article VII(1) of the Tribunal's Statute requires. The Organization does not go into the merits but merely asks for leave to argue them should the Tribunal declare the complaint receivable.

4. The Tribunal need not entertain the FAO's general objection to receivability since the claims put forward in the complaint must all fail anyway for the reasons that are set out below. That being so, further pleadings are unnecessary.

Claim 1: damages for "inflicted atrocities"

5. This claim fails because the complainant is not challenging any final administrative decision or decisions and because its wording is too vague for it to be entertained. Insofar as it is by way of damages for moral injury that he may be deemed to be claiming an award of \$5 million under this head the claim again fails because he has not validly challenged any unlawful act of the Organization's warranting the grant of such damages.

Claim 2.1: payment of daily subsistence allowance (DSA) for a briefing in Rome in April 1982, prior to his Libyan assignment

Claim 2.2: payment of DSA for a debriefing in Rome in July 1984, after his Libyan assignment

Claim 2.3: payment of salary for the same debriefing in Rome in July 1984

Claim 2.4: payment of DSA for a briefing in Rome in December 1987, prior to his assignment in Saudi Arabia

Claim 2.5: payment of DSA for a debriefing in Rome in February 1991, after his assignment in Saudi Arabia

Claim 2.6: payment of salary for the same debriefing in Rome in February 1991

6. As the Assistant Director-General's letter of 9 March 1994 pointed out, the complainant failed to file any of these claims within the time limit set in FAO Staff Rule 302.3171, which reads:

"The right of a staff member to claim any ... payment existing but unpaid, shall lapse two years after the date on which the entitlement arose."

He has therefore failed to exhaust the internal means of redress, as Article VII(1) of the Tribunal's Statute requires, and the claims are irreceivable.

Claim 2.7: payment of DSA for accompanying his wife in Paris from 2 to 9 March 1992

7. The Organization's decision rejecting this claim was notified to the complainant by a letter of 6 May 1992 from the acting Assistant Director, Administrative Services Division on the grounds that his stay in Paris from 3 March 1992 would be "charged", not as special leave with pay, but as annual leave and therefore no DSA was payable. Since he did not appeal to the Director-General within the ninety-day time limit set in Staff Rule 303.1311 for such appeal his claim is again irreceivable because of his failure to exhaust his internal remedies.

Claim 2.8: payment of DSA for a briefing in Rome in June-July 1991, prior to his assignment in Chad

8. A letter of 7 October 1991 from the Financial Services Division informed the complainant of the Organization's rejection of this claim on the grounds that he had been recruited in Rome. Not having appealed to the Director-General within the ninety-day time limit, he has again failed to exhaust the internal means of redress and on that account the claim is irreceivable.

Claim 2.9(a): adjustment of annual leave for accompanying the complainant's wife in Paris in March 1992 or payment of a lump sum in lieu

9. This claim fails for the same reasons as those set out in 7 above.

Claim 2.9(b): adjustment of annual leave for assignments in Saudi Arabia in 1988-90 or payment of a lump-sum in lieu

10. The complainant first made this claim in a letter of 25 July 1990. The Organization's failure to take a decision within a reasonable time implied rejection and the complainant should again have applied within the prescribed ninety-day time limit for administrative review of such rejection. Since he did not, this claim too is irreceivable for failure to exhaust the internal remedies.

Claim 2.9(c): further entitlements due to the grant of leave without pay between assignments in 1990 and 1991 or payment of a lump sum in lieu

11. Whether in a period between two assignments an official is to be treated as on special leave without pay is an issue that can arise only when the later assignment is granted. So in this case the issue can have arisen only in June 1991, when the Organization granted him his last fixed-term appointment. Since he failed to apply for review within the time limit of ninety days in Staff Rule 303.1311, the claim is irreceivable.

Claim 2.10: payment of DSA in Rome from 6 October 1993 to 23 December 1994

12. It is not in dispute that the complainant was evacuated from Chad for reasons of health in August 1993 and was on "medical travel" status within the meaning of Rule 302.651. Manual paragraph 409.51 provides for the payment of daily subsistence allowance for a maximum of forty-five days during a period when a staff member is on such status. The complainant was entitled only to such payment, and his claim to more is therefore without merit.

Claim 3: the right to a continuing appointment

13. The complainant does not dispute that a decision was not taken on this claim until 8 March 1994. So there was no final decision on 7 January 1994, when he appealed to the Director-General, who correctly rejected it as irreceivable on the grounds that he was challenging no final decision.

Claim 4: costs

14. Since the complainant's claims fail in their entirety for the reasons set out above he is entitled to no award against the costs he claims.

DECISION:

For the above reasons,

The complaint is dismissed.

In witness of this judgment Sir William Douglas, President of the Tribunal, Mr. Michel Gentot, Vice-President, and Mr. Mark Fernando, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 1 February 1996.

William Douglas  
Michel Gentot  
Mark Fernando  
A.B. Gardner