

EIGHTY-SIXTH SESSION

In re Zoccoli

Judgment 1783

The Administrative Tribunal,

Considering the complaint filed by Mr. Mario Zoccoli against the Food and Agriculture Organization of the United Nations (FAO) on 27 October 1997 and corrected on 8 December 1997, the FAO's reply of 23 February 1998, the complainant's rejoinder of 6 May and the Organization's surrejoinder of 21 June 1998;

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, an Italian who was born in 1944, worked a short stint for the FAO in 1970. On 1 June 1971 the World Food Programme, a joint subsidiary body of both the United Nations and the FAO, took him on but it did not confirm his appointment at the end of the period of probation. On 1 December 1971 he joined the staff of the FAO's Commissary under a special services agreement. In January 1977 the FAO granted him a permanent appointment. In October 1979 it transferred him to the Programme. He has held grade G.4 since 1 August 1981.

He used to serve in the Budget Service of the Programme. On 6 July 1995 his first-level supervisor gave him the "interim mid-year review" of performance that a procedure known as "Management and Appraisal of Performance" called for. She found him wanting. On 19 July he challenged her appraisal but on 15 September it went through. On 11 July he had moved to the Accounts Unit of the Programme, and there he serves as a budget clerk. He had been warned of that move orally on 2 June and the Director of Human Resources confirmed it in a memorandum of 6 July.

The Director of the Finance and Information Systems Division of the Programme wrote him a memorandum on 18 September 1995 to say that he would not be approving any within-grade step increment until he knew that the complainant had worked better and got on better with other staff since the mid-year review and the transfer; if his new supervisor expressed satisfaction with him by the end of January 1996 he would have the increment backdated.

The complainant wrote memoranda on 28 September to the author of the mid-year review and on 17 October to the acting Director of Human Resources asking for conciliation proceedings. On 1 November the acting Director answered that the mid-term review was an unofficial and provisional assessment, not an administrative measure or decision, and did not warrant conciliation; the purpose of it was to alert him to any shortcomings he must make good in order to get a fully satisfactory report at the end of the year; and he might challenge that report if he cared to.

By a memorandum of 31 January 1996 the Deputy Director of Finance and Information Systems told him that his output was low; although the reporting process was not over, the Deputy Director had to meet the deadline for recommendations and was advising the Director of Human Resources to withhold his increment. On 5 February the acting Director of Human Resources informed him that a decision about his increment must bide final appraisal. The appraisal was done by 29 March. His supervisor found his work still below par but rated him 3 ("fully satisfactory") because he had only just come to the unit and had been working better in the last few months. By a memorandum of 4 April 1996 the acting Director of Human Resources gave him the increment retroactively.

By a memorandum of 31 March 1996 the complainant had filed with the Director-General of the FAO a request for review of the memorandum of 31 January from the Deputy Director of Finance and Information Systems recommending withholding his increment. On 25 April the Deputy Executive Director of the Programme rejected his appeal on the Director-General's behalf on the grounds that the Deputy Director had made a mere

recommendation and that in any case he had got the increment retroactively. He lodged an appeal against that decision on 27 May 1996, citing the withholding or staying of several increments between 1986 and 1995 and unfair treatment in his division. In its report of 8 May 1997 the Appeals Committee of the FAO recommended rejection. The Director-General endorsed that recommendation in a letter of 30 July 1997. That is the decision he is impugning.

B. The complainant submits that the mid-term review overlooked some facts and got others wrong. His supervisor in the Budget Service provoked him so as to forge a pretext to have him moved to the Accounts Unit.

He accuses the Organization of harassing him, particularly over the grant of increments in 1986, 1991, 1993 and 1995. It took or threatened "negative administrative actions" to stifle his protests at "continuous, repetitive and arbitrary transfers". The powers that be in the Programme showed him "lack of consideration" and exposed him to a "hostile" environment by bungling the transfers.

The FAO is ignoring paragraph 3 of Appendix B to section 331 of its Manual, which provides for a "panel of counsel" to help staff with appeals.

He asks that the report of 6 July 1995 and any relevant papers be struck from his personal file or else treated as restricted material and put in his own file and his erstwhile supervisor's in "open or sealed" envelopes. He claims an award of 100,000 United States dollars in moral damages and the refund of the medical expenses which he incurred for treatment he says he needed because of harassment and which his medical insurance did not cover.

C. The FAO replies that since it applied the rules in assessing the complainant's performance he may not plead breach of the terms of his employment or of the Staff Regulations and Rules. The mid-year review did serve to warn him since by the end of the year his performance was found "fully satisfactory". So there is no reason to strike it from his file. As for the end-of-year report, it was good; so he has no cause of action.

His claim to moral damages for harassment from 1986 until 1993 is irreceivable because he has failed to exhaust his internal remedies. He neglected to challenge the several recommendations about increments within the time limits set in the Staff Rules and in the Tribunal's Statute. His claims to damages and to medical costs did not form part of his appeal of 31 March 1996 to the Director-General. Besides, any injury he may have suffered was his own fault.

In subsidiary argument on the merits the FAO recounts his rows with supervisors and other staff since 1982 and says he is wholly to blame. People in the Programme have shown him great forbearance.

D. In his rejoinder the complainant maintains that the report on his performance was made in breach of due process. FAO Manual paragraph 315.325 says that the final decision on grant of an increment must come within two months of the date at which it fell due. In his case it did not, and such tarrying shows the Organization's "will to create an atmosphere of intimidation, harassment and insecurity". Besides, it was on the strength of the mid-year review that he was shunted to the Accounts Unit, and that was a breach of the process of reporting.

Since the Appeals Committee did, however cursorily, look at the many unlawful administrative decisions he has suffered, his internal remedies must be deemed exhausted.

Although the Organization always let the increments through in the long run, it caused him actionable distress. Fellow staff grumbled about him just because they saw in his coming a threat to their own careers. He presses his charges of harassment and taxes the Organization with bad faith.

E. In its surrejoinder the Organization presses its pleas.

CONSIDERATIONS

1. At the material time the complainant held a post graded G.4 as a budget clerk in the Budget Service of the World Food Programme. On 6 July 1995 he saw the text of an "interim mid-year review" of his performance by his supervisor, a budget officer with the Programme. He demurred in a memorandum of 19 July. His supervisor reconsidered the review but confirmed it and told him so in a memorandum of 15 September 1995.

2. He applied on 28 September and again on 17 October 1995 for what is known as "conciliation". The acting

Director of Human Resources answered on 1 November that, being provisional and unofficial, the review amounted neither to an administrative measure nor to a decision; so conciliation did not apply.

3. On 11 July 1995 the complainant had moved to the Accounts Unit of the Programme. The Deputy Director of the Finance and Information Systems Division, to which his new unit belonged, wrote him a memorandum on 31 January 1996. It said that his within-grade step increment was being withheld because his output was low and his work needed checking.

4. On 31 March 1996 he put a request for review to the Director-General of the FAO. He objected to the refusal of the increment and asked to have any papers relevant to the review of 6 July 1995 struck from his personal file on the grounds that they had prompted that refusal.

5. In a reply dated 25 April 1996 the Deputy Executive Director of the Programme pointed out that according to the FAO's Manual appeal lay only against disciplinary action or some adverse administrative decision; the memorandum of 31 January 1996, being neither, was not appealable; in any event he had got the increment on 4 April 1996 and the final appraisal of his performance in 1995 had termed it "fully satisfactory".

6. On 27 May 1996 the complainant went to the FAO's Appeals Committee. Neither the text of his appeal nor the Committee's report is in the case records. All that emerges from the evidence is that by a decision of 30 July 1997 the Director-General dismissed his appeal of 27 May 1996.

7. In challenging that decision the complainant is asking the Tribunal to order the FAO -

(a) to strike from his personal file the interim report of 6 July 1995 and any papers relating thereto or else treat them as restricted material and put them in his own file and in that of his former supervisor - the author - in "open or sealed" envelopes;

(b) to pay him 100,000 United States dollars in moral damages; and

(c) to refund the medical costs which he incurred for treatment he says he needed because of harassment and which his medical insurance did not cover.

8. As to his first claim, Manual paragraph 340.12 reads:

"... The Personnel File is the confidential record concerning a staff member which (with the exception of medical data) is the repository for all papers pertinent to the staff member's service with the Organization."

So it stands to reason that the complainant's file should contain any papers lawfully made out and bearing on his services with the Organization, save medical reports. In the circumstances his claim to removal of the interim review from his file must fail: there was nothing unlawful about that text and it was in any event superseded by the final appraisal, which was good.

9. In support of his other claims the complainant blames the Programme for putting him through the mill by, for example, withholding increments and transferring him over and over again. The Tribunal holds that such action fell within the ambit of management and, unless he can show otherwise, affords no grounds for his charge of harassment. Since he has offered not a shred of evidence in support, his other claims too must fail.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, adopted on 13 November 1998, Mr. Michel Gentot, President of the Tribunal, Mr. Julio Barberis, Judge, and Mr. James K. Hugessen, Judge, sign below, as do I, Allan Gardner, Registrar.

Delivered in public in Geneva on 28 January 1999.

(Signed)

Michel Gentot

Julio Barberis

James K. Hugessen

A.B. Gardner

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