

***In re* CONNOLLY-BATTISTI (No. 3)**

**Judgment No. 293**

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint against the United Nations Food and Agriculture Organization (FAO) drawn up by Mrs. Norah Connolly-Battisti on 19 December 1975 the FAO's reply of 27 October 1976, the complainant's rejoinder of 25 November 1976 and the FAO's surrejoinder of 29 December 1976;

Considering the applications to intervene made by

Miss Suisa Almagia,  
Miss Helen Birch,  
Mrs. Marie-Claude Boucamus-Carducci,  
Mrs. Patricia Brewster-Marini,  
Mrs. Deirbhile Buitléar,  
Mrs. Maria Suisa Camaron Alvarez-Pensosi,  
Miss Jean Cameron,  
Miss Aurora Carazo,  
Miss Margaret Ann Chaplin,  
Mrs. Annalisa Cibien-Colizzi,  
Mrs. Francine Corbet,  
Mrs. Barbara Dixon,  
Mrs. Noëlle Duguet-Turtura,  
Mrs. Margaret Farrell-Natalizia,  
Mrs. Merle Flowers-Marozza,  
Mrs. Margaret Gabison,  
Mrs. Una Garau,  
Miss Patrizia Hegedus,  
Mrs. Marian Josephine Jones-Cammarata,  
Miss Eileen Kirwan,  
Mrs. Maria Teresa Lopez Vallarino,  
Mrs. Patricia Decima Matthews-Migliosi,  
Mrs. Veronica McDonald-Bonini,  
Mrs. Vivian Miles-Cattabiani,  
Mrs. Geraldine Mortleman Delle Fratte,  
Mrs. Adriana Nardone,  
Mrs. Kathleen O'Farrell-Rocchi,  
Mrs. Rosalind Oliver-Borelli,  
Mrs. Georgina Phillips-Valeri,  
Mrs. Natalizia Piero,  
Mrs. Réjeanne Pollicino,  
Miss Liliane Rastello,  
Mr. Tito Guido Rivetta,  
Mrs. Wanda Saliweczyk-Barbato,  
Miss Jean Margaret Spinks,  
Mrs. Anne Louise Stunt-Gobbi  
Mrs. Orla White-Natalizia,  
Mrs. Mary Ann Elizabeth Wollny;

Considering Article II, paragraph 5, of the Statute of the Tribunal, the FAO Staff Regulations and Staff Rules, particularly Staff Regulations 301.045 (both the version in force up to 1 July 1974 and the amended version in force from that date) and 301.121 and FAO Manual Section 314 and Annex A thereto;

Having examined the documents in the dossier and deeming the oral proceedings suggested by the complainant to be unnecessary;

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

A. The complainant joined the staff of the FAO on 30 August 1954. She is now a research assistant at the G.6 grade. On 1 July 1958 her appointment, which had been described as "indefinite", was declared to be "permanent". In June 1975 the FAO Council decided to stop using the term "permanent" and replace it with the term "continuing". The Staff Regulations were accordingly amended with effect from 1 July 1975. On 23 July the complainant was told of the change by staff circular. The "payroll status form" which she and other staff members received for August 1975 also used the new term.

B. On 5 September 1975 the complainant appealed to the Director-General against the administrative decision to describe her appointment as "continuing" on her payroll status form. She pointed out that she had held permanent status for seventeen years and contended that the FAO Council could not take away an acquired right. On 3 October 1975 the Director-General answered that the change in terms did not affect the conditions of her appointment or her acquired rights. She appealed to the FAO Appeals Committee. In its report the Committee took the view that the FAO could not retroactively change a staff member's appointment from a "permanent" to a "continuing" one and that the Council's decision should apply only to staff recruited in future. It therefore unanimously recommended allowing the appeal. By a letter of 7 May 1976 signed by Mr. Roy I. Jackson, Deputy Director-General, the complainant was nevertheless informed that her appeal had been dismissed.

C. The complainant fears in particular that should a staff member with a "continuing" appointment be assigned to a post which is later abolished he may find his employment terminated, whereas when appointments were described as "permanent" the FAO was bound to try to find other employment for the incumbent of an abolished post. In her claims for relief the complainant asks the Tribunal to order the FAO to confirm her status as the holder of a permanent appointment, to stop using the term "continuing" in all documents, whether official or unofficial, which refer to her employment status in the FAO and to guarantee her the security of employment given by permanent status according to the Manual Sections on that subject and on reduction of force. The interveners make similar claims.

D. The FAO contends that calling the complainant's appointment a "continuing" instead of a "permanent" one denotes a mere change in terms and in no way affects her acquired rights. It therefore asks the Tribunal to dismiss the complaint.

#### CONSIDERATIONS:

1. It is not disputed that at all material times the Council of the Organization could by means of a resolution supplement or amend the Staff Regulations without prejudice to the acquired rights of staff members. At its 66th session in June 1975 the Council resolved that the use of the term "permanent" in relation to a staff member's employment be discontinued and replaced by "continuing"; and with respect to this change in nomenclature the Council authorised the Director-General to make the necessary editorial changes in the Staff

Regulations. As a result of such changes the employment of the complainant and the interveners, which had until then been officially described as permanent, was thereafter described as continuing.

2. In the first place the complainant contends that the Director-General exceeded his authority in that the Council's resolution upon its true construction applies only to employment created after the date when the resolution was put into effect. The Tribunal rejects this contention. Since the resolution is expressly described as effecting a change in nomenclature, there could be no reason for limiting its meaning in this way. The Council is unlikely to have intended that a type of employment which throughout remains the same in substance, should bear one description before a certain date and another thereafter.

3. In the second place the complainant contends that the change in description cannot apply to her because she has an acquired right to have her employment described as permanent.

In the opinion of the Tribunal the expression "acquired right" in this context relates to rights of substance, whose impairment would result in injury, financial or otherwise, to the staff member: it does not embrace matters of nomenclature.

4. In the third place the complainant contends that the change is not a mere matter of nomenclature and that in certain circumstances, as for example in the case of reduction of force, her security of tenure might be affected.

The Organization disputes this and has in fact given, both to the complainant personally and to the staff in general by administrative circular, the clearest and most explicit assurances that the amendment was concerned only with terminology, that it did not alter the conditions of employment or security of employment and that staff members whose permanent appointments had been redesignated as continuing retained all their previous entitlements. This is not merely an assurance, it is also a correct statement of the law. Staff Regulation 301.121, which provides for the making of amendments, has remained unaltered since 1952 and prescribes, as noted above, that any amendment is "without prejudice to the required rights of staff members". Consequently, to the extent to which any staff member had before the amendment a right to security of tenure or to any other benefit, such right is protected by Staff Regulation 301.121.

DECISION:

For the above reasons,

The complaint together with the interventions is dismissed.

In witness of this judgment by Mr. Maxime Letourneur, President, Mr. André Grisel, Vice-President, and the Right Honourable Lord Devlin, P.C., Judge, the aforementioned have hereunto subscribed their signatures as well as myself, Morellet, Registrar of the Tribunal.

Delivered in public sitting in Geneva on 6 June 1977.

M. Letourneur  
André Grisel  
Devlin

Roland Morellet