

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

FORTY-EIGHTH ORDINARY SESSION

In re PETRUC

Judgment No. 501

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed against the Food and Agriculture Organization of the United Nations (FAO) by Mr. Théodore Claude Petruc on 26 August 1980 and brought into conformity with the Rules of Court on 12 September, the FAO's reply of 19 November and its communication of 5 December, the complainant's rejoinder of 18 December and communication of 26 December 1980, and the FAO's surrejoinder of 10 February 1981;

Considering Article II, paragraph 5, of the Statute of the Tribunal and FAO Staff Rule 301.113;

Having examined the written evidence, oral proceedings having been neither applied for by the parties nor ordered by the Tribunal;

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

A. From July 1966 to October 1976 the complainant served as an FAO expert in several countries. His health deteriorated while he was in Senegal in the circumstances described in paragraph A of Judgment No. 502. After taking steps which he maintains were intended to obtain a disability benefit but which came to nothing, he filed an appeal on 26 December 1980 with the FAO Appeals Committee. He asked the Committee: (1) to declare that the reason for the termination of his appointment was the illnesses which he had contracted in Senegal and which were directly attributable to the performance of his duties; (2) to recommend that the Director-General have him examined by a board of his own choosing for the purpose of determining his right either to compensation for service-incurred illnesses or to a disability benefit. In its report of 12 February 1980 the Committee recommended that the promptest action should be taken on the complainant's application, the file of his case being forwarded to the competent bodies for decision. As to his application for a disability benefit the Deputy Director-General informed him by a letter of 13 May 1980 that if he wished to pursue the matter he might write to the Secretary of the "United Nations Staff Pension Board" in accordance with the procedure laid down in the Rules of the United Nations Joint Staff Pension Fund. On 25 July the complainant addressed an appeal to the United Nations Administrative Tribunal. On 29 July the Secretary of that Tribunal informed him that it was not competent, and on 26 August 1980 the complainant filed his present complaint.

B. The complainant believes that the procedure he was invited to follow is inapplicable since the United Nations Joint Staff Pension Board may not take up a case until the FAO Staff Pension Committee has considered it and failed to reach unanimity. Where the FAO Committee is unanimous the decision remains final. To follow the procedure suggested by the FAO would be to presume lack of unanimity in the FAO Committee. The complainant therefore invites the Tribunal to order the FAO to follow the procedure set out in the Pension Fund Rules and submit his application for a disability benefit to the FAO Staff Pension Committee.

C. In its reply the FAO argues that the passage about disability benefit in the letter of 13 May 1980 to which the complainant takes exception was not a decision but merely an opinion. The Director-General has in fact taken no decision. A mistake of terminology in the letter may have led the complainant to believe that he should write to the United Nations Staff Pension Board instead of the FAO Staff Pension Committee, but it is clear from his own pleadings that he was quite aware of the mistake. It would therefore have been more satisfactory if, instead of filing a complaint with the Tribunal, he had just pointed out the mistake to the Director-General. Besides, by a letter of 2 December 1980, of which it supplies a copy, the Administration confirmed that his application for a disability benefit should go to the FAO pension committee. The FAO therefore maintains that there is no cause of action.

D. In his rejoinder the complainant gives an account of the procedural delays in his case, which he regards as excessive and as a gross breach of the rules and practice and which the Appeals Committee itself deplored. On the

point of receivability he finds unconvincing the FAO's argument that there was a mere mistake of terminology in the letter of 13 May 1980. He filed his complaint with the Tribunal because he no longer had any confidence in the FAO's objectivity in dealing with his case.

E. In its surrejoinder the FAO discusses its correspondence with the complainant and concludes that he has never actually submitted, or even intended to submit an application for a disability benefit. His real purpose, it believes, was reinstatement in employment. He has never lodged a proper application for the benefit, the FAO has no reason to try to prevent him from obtaining one, and it is willing to forward to the Secretary of the FAO pension committee any text he regards as constituting his application. The FAO therefore abides by its original conclusions and again asks the Tribunal to declare that the complaint discloses no cause of action.

CONSIDERATIONS:

In so far as it relates to the grant of a disability benefit, the letter written on 13 May 1980 by the Deputy Director-General of the FAO does not constitute a decision which affords a cause of action before the Tribunal.

The Tribunal notes the FAO's proposal to forward to the competent bodies any further application from the complainant for the grant of a disability benefit.

The complainant's other claims, for the issue of orders to the Organization, are also irreceivable.

DECISION:

For the above reasons,

The complaint is dismissed.

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

Delivered in public sitting in Geneva on 3 June 1982.

(Signed)

André Grisel

J. Ducoux

Devlin

A.B. Gardner